

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
76-1424

76-1425

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

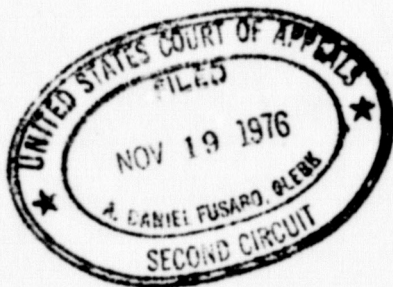
-against-

LUGENIA BARNES and CHARLES THOMAS,

Appellants.

*On Appeal From The United States District
Court For The Southern District Of
New York*

APPELLANTS' APPENDIX



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DOCKET ENTRIES (Barnes)

9-5-75 Filed indictment. B/W ordered. Werker, J.
 B/W issued.

9-8-75 Filed copy of B/w issued 9/5/75 and executed
 9/8/75.

9-8-75 Indictment ordered unsealed. Werker, J.
 Def. (atty. present) Waives reading of the
 indictment and pleads not guilty. Deft.
 ordered photographed and fingerprinted. Deft.
 R.O.R. Case assigned to Judge Stewart for
 all purposes. Werker, J.

9-15-75 Filed defts. notice of appearance by:
 Nancy Rosner of 401 Bdwy, NYC 10013

2-27-76 Filed govts. notice of readiness for trial.

6-10-76 PTC held. Stewart, J.

6-15-76 Filed defts. memorandum of law. (also see 75
 CR 888)

6-17-76 Filed govts. memorandum of law. (also see 75
 CR 888)

6-28-76 Filed govts. proposed examination of
 prospective jurors.

6-28-76 Filed govts. request to charge.

6-28-76 Jury trial begun (consolidated w/75 CR 888).
 Stewart J.

6-29-76 Jury trial contd.

6-30-76 "

7-1-76 "

7-2-76 " and concluded. Deft. found GUILTY by jury
 verdict on each of cts. 1 & 2 and NOT GUILTY
 on ct. 3. Bail set at \$10,000 PRB secured by
 \$2 cash to be posted by July 9, 1976 at end
 of regular business day. PSI ordered. Sentence
 adj. to Aug. 5, 1976 at 9:30 am. Stewart, J.

7-9-76 Filed order--ORDERED that the time of deft. to post bail pending appeal is ext. to July 13, 1976. Stewart, J. m/n

7-14-76 Fld appearance bond in the amount of \$10,000, \$2,000 cash with the clerk U.S. District Court SDNY Receipt No. 73110

8-23-76 Filed transcript of record of proceedings, dated 6-29, 30, July 1, 2, 1976.

9-15-76 Filed govts. sentencing memorandum.

9-15-76 Filed JUDGMENT (atty. Paul Goldberger, present)--The deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of FOUR (4) MONTHS on cts. 1, & 2 to run concurrently with each other. Stewart, J. (copies issued) Deft. notified to file notice of appeal. Deft. released pending appeal. Bail set in amt. of \$12,000 PRB secured by \$2,000 cash to be co-signed by parents. Stewart, J.

9-17-76 Filed PRB pending appeal in the amt. of \$12,000 secured by \$2,000 cash.

9-23-76 Filed deft.'s. notice of appeal to USCA from the final judgment dtd. 9/15/76. Copies mailed to U.S. Atty's. Office and to deft. at 340 E. 188 St., Bronx, NY

10-14-76 Filed notice to obtain the original record on appeal has been certified and transmitted to the U.S.C.A.

DOCKET ENTRIES (Thomas)

9-5-75 Filed indictment and ordered sealed. B/W ordered. Werker, J.

9-5-75 B/W issued.

9-8-75 Filed B/W issued on 9/5/75 and executed 9/8/75.

9-8-75 Indictment ordered unsealed. Werker, J. Deft. (Atty. present) Plead: not guilty. Bail fixed at \$10,000. cash or surety. Deft. ordered photographed and fingerprinted. Deft. released in the custody of his attorney until 4:30 p.m. to post bail. 4:30 p.m. 9/8/75. Deft. remanded in lieu of bail. Case assigned to Judge Werker for all purposes. Werker, J.

9-15-75 Filed defts. notice of appearance by: Nancy Rosner of Rosner, Fisher and Scribner of 401 Broadway, NYC 10013.

9-17-75 PRE-TRIAL CONFERENCE HELD BY Stewart, J.

12-23-75 Filed the following papers recd. from the office of Mag. Jacobs: docket sheet; appearance bond in the amt. of \$10,000.

12-27-76 Filed govts. notice of readiness for trial.

5-20-76 Case reassigned to Judge Stewart. m/n

6-10-76 PTC held. Deft. produced on writ. Writ adj. sinedie. Stewart, J.

6-7-76 Filed govts. affdt. of w/h/c--writ issued, ret. on: June 9, 1976.

6-14-76 Filed order--ORDERED that Paul Goldberger be substituted as atty. of record in place of Nancy Rosner. Stewart, J. m/n (for both defts.)

6-15-76 Filed defts. memorandum of law. (filed in 75 CR 887)

6-17-76 Filed govts. memorandum of law. (filed in 75 CR 887)

6-28-76 Jury trial begun. Deft. produced on writ. (consolidated w/75 CR 887). St

6-29-76 Jury trial contd.
6-30-76 "
7-1-76 "

7-2-76 " and concluded. Deft. found GUILTY by jury verdict. PSI ordered. Sentence adj. to Aug. 5, 1976 at 9:30 am. Stewart, J.

7-8-76 Filed order--ORDERED that deft. is remanded to the custody of the US Marshall and bail posted is exonerated. Stewart, J. m/n (copy to marshal's office)

8-23-76 Filed transcript of record of proceedings, dated 6-29, 30, July 1, 2, 1976.

9-15-76 Filed govts. sentencing memorandum.

9-15-76 Filed JUDGMENT (atty. Jerry Feldman, present)-- the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of FIFTEEN (15) MONTHS on cts. 1 and 2 to run concurrently and consecutively to his State manslaughter sentence and his violation of parole on that manslaughter sentence. Stewart, J. (copies issued)

9-23-76 Filed defts, notice of appeal to the USCA from the judgment of 9/15/76. Copies is mailed to US Atty's. Office and to deft. c/o MCC.

10-1-76 Filed notice that the original record on appeal has been certified and transmitted to the U.S.C.A.

10-4-76 Filed writ of H/C Ad Pros. with Marshall's return writ satisfied (9-15-76 STEWART, J.)

A5

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :

- v - :

LUGENIA BARNES, :

Defendant. :

INDICTMENT

75 Cr. 887

Stew

-----X
COUNTS ONE THROUGH THREE

The Grand Jury charges:

1. On or about August 21, 1975, in the Southern District of New York, LUGENIA BARNES, the defendant, having duly taken an oath as a witness that she would testify truthfully before a Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Southern District of New York, and inquiring for that District, unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations as hereafter set forth.

2. At the time and place aforesaid, the said Grand Jury was conducting an investigation of possible violations of the laws of the United States regarding the murder on or about August 8, 1975 of Oswald A. Peterson, a/k/a "Georgia Pete" ("Peterson"), and of O. R. Wilson, a/k/a "Chick" ("Wilson").

whose bodies were found on August 10, 1975 in a U-Haul Van, Maine license plate number COM 61-706 in the vicinity of Claremont Avenue and 122d Street, New York, New York including among violations, violations of the following statutes: Sections 241 (civil rights conspiracy), 1503 and 1510 (obstruction of justice) and 1623 (perjury), of Title 18, United States Code and Sections 801-966 of Title 21, United States Code, (sale and distribution of narcotic drugs and conspiracies so to do) to determine

a. whether said murders were committed in furtherance of a conspiracy, plot or plan to injure, oppress, threaten or intimidate Peterson and/or Wilson in the free exercise and enjoyment of any right or privilege secured to either of them by the Constitution or laws of the United States, to wit, the right of either of them to testify about and give information concerning violations of laws of the United States;

b. whether said murders were an endeavor by means of force to obstruct and prevent the communication of information relating ^{to} violations of criminal statutes of the United States, particularly those relating to narcotics and dangerous drugs by Peterson or Wilson to a criminal investigator;

c. whether said murders were committed on account of the giving by Peterson or Wilson of such information to any criminal investigator;

d. whether said murders were committed in furtherance of a conspiracy to violate the narcotics laws of the United States.

3. It was material to said inquiry to determine whether the defendant LUGENIA BARNES had any knowledge of and participated in:

a. the rental by the said LUGENIA BARNES and Charles Thomas on August 8th, 1975 of and use of a U-Haul Van, Maine license plate number COM81-706, which was discovered on August 10, 1975 in the vicinity of Claremont Avenue and 122nd Street, New York, New York containing the dead bodies of Peterson and Wilson;

b. how and when said van was driven to the vicinity of Claremont Avenue and 122nd Street, New York, New York;

c. how the person or persons who drove said van to the vicinity of Claremont Avenue and 122nd Street, New York, New York obtained possession, custody and control of said van;

d. the identity of said person or persons; and
e. the role, if any, played by the said
LUGENIA BARNES and Charles Thomas in disposing of
the bodies of Peterson and Wilson.

4. At the time and place aforesaid LUGENIA BARNES,
the defendant, appearing as a witness under oath before the
said Grand Jury testify falsely with respect to the aforesaid
material matters and did make the following false material
declaration.

COUNT ONE

Q Okay. Now, directing your attention to
the early part of August of this year, did there
come a time when you rented a U-Haul truck? A Yes.

* * *

Q And what was the purpose of your renting
that truck? A To move some clothing.

* * *

Q Did you drive the van or did he? A He
drove from the gas station, and then I drove afterwards.

Q And where is the gas station? A It's on
Webster Avenue and Gunhill Road.

Q And that's in the Bronx? a Yes, I'm sorry
Bronx.

Q And that's where you rented the van. After that
where did you go, you and your boy friend? A We
went down to his old apartment.

Q And his old apartment is which apartment?

A 11 West 118th.

* * *

Q You parked the van, I take it?

A Yes

we parked the van and packed in clothing.

Q Now, prior to that, did you also drive around in the van to get used to -- A I drove it. Well, I was going to do the driving, so I was going to drive around to get used to the van, because I wasn't, you know, sure I'd be able to handle it.

Q Where did you drive around, in the area of the Bronx? A In the area of the Bronx, around Webster Avenue area.

Q About how long did you do this? A --

Q Roughly. A Forty-five minutes, maybe an hour maybe less.

* * *

Q Okay. Then it was after that that you drove to 1 West 118th Street? A. Yes.

* * *

Q After you went to 118th Street, where did you go after that? A Um, well, we stopped to eat --

Q Did you first -- A -- at McDonald's.

Q Did you go to Charley's mother's house?

A Oh, I'm sorry. We stopped at his mother's house, a block away.

Q And that's located -- A That's on 118th Street. It's 103. Then from there we went and ate.

Q Where did you go to eat? A 125th - McDonald.

Q Now, after you went to McDonald's, where did you go? A Then we went back to the Bronx, to my -- my apartment, which is 340 East 114th.

* * *

Q And then there came a time you went to your doctor's office, is that correct? A Yes.

Q And what is his name? A Uh, Kubel, Dr. Kub. [spells].

Q And do you know where his office is? A Yes, he's on 182nd and Grand Concourse.

Q And did you drive there with Mr. Thomas?

A Yes.

Q And do you know how long you stayed there, approximately? A Well, I was late for my appointment. I got there, approximately, I would state - it had

All

to be after three, four; because I was late, the doctor left. I guess I was there ten or fifteen minutes.

Q And after you left the doctor's office, where did you go after that, do you know?

A Went back to my apartment, 340 East 184th.

Q And how long were you there, do you recall?

A I'm sorry. After the doctor we went back downtown - I'm sorry.

Q You didn't go back to your apartment, you went back to 11 West 118th Street? A Yes.

Q Every time you went to these places, what did you do with the van, parked it outside?

A Yeah.

Q Were there places there, or did you have to drive around, looking? A Some places we parked, you know, right near wherever I was going, and I had to park wherever there was a space - you know, around the corner.

Q I understand. A We parked the van, yes.

Q When you got to 118th Street, -- A We moved the clothing.

Q -- You loaded up the truck? A Yes.

Q You went from there to your house, is that correct? A Yes.

Q Do you remember the route you took to get there? A I didn't take the highway because I wasn't sure whether or not I could use, you know - the van is like a commercial vehicle; so I went Amsterdam Avenue, Cross Bronx Express, Webster Avenue, and up Webster Avenue to 184th.

Q To where? A 184th, my home.

* * *

Q You went up Webster Avenue and then north on Webster to Tremont? Would that be correct?

A North on Webster to 184th. Tremont is in between my - 184th and the Cross Bronx Express.

Q And when you got there, what happened? Did you park the truck or just leave it on the street?

A At my home?

Q Yes. A Yes, I parked it.

Q Did you have to look around for a space?

A We were moving clothing, so we moved them, you know.

Q You left it right in front? A Right in front of the building.

Q And after you unloaded the truck, what did you do? A Well, it was kind of late then and

we'd been out all day. We went back upstairs, because at that time there was no parking space, we couldn't find one. I left it right in front of my door - not directly in front of my door; I live on top of a steep -- I left it at Tibaut [spells] and 184th.

Q Did you have to drive around to find a parking space? A Yeah, so I eventually left it there. Now, this was okay. I came back, we unloaded the things.

* * *

Q How long would you say you drove around, looking for that space? A About fifteen or twenty minutes.

Q You went around the block several times, would you say? A Yeah.

Q And then you went up to your apartment, is that correct? A Yes.

Q And then was there a time when you went back down to the truck? A Yes, later on that evening I reparked it for the night.

Q And that would be -- do you remember the approximate time? A Exactly, no.

A13.1

Q Let's say approximately 12:30? A It was late, yes. It was late - I'd say around 12:00, 12:30.

Q Do you remember where you parked that time?

A I -- yes, between 183rd and 184th on Valentine Avenue.

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COUNT TWO

Q Then you went to your apartment?

A That's right.

Q Did you leave your apartment after that?

A No. Not until the next morning.

Q About What time did you leave?

A It was around seven-ten or something like that. I had to return the van before eight or I'd be charged for the next day.

Q What happened when you looked for the van?

A It wasn't there.

Q But you're absolutely certain that it was there approximately twelve-thirty the previous night?

A When I parked the thing?

Q Yes. A Yeah.

Q What did you do then, when you noticed the van was missing? A Well, we walked around the vicinity for a while, because it's common for cars to get stolen in that area, but we didn't find it; so I, you know, came back home and I called the police station.

COUNT THREE

Q And when you parked it, now, on 183rd and 184th Street did you take the keys to the truck?

A Yes, when we got out, I took the keys.

Q And what did you do with them, do you recall?

A Well, I attempted to put it in my bag - I assumed I put them in my bag. I had a flap bag, I lifted the flap up and threw in my bag. I had a flap bag, I lifted the flap up and threw it in.

It wasn't until the following day, I think it was, when I spoke with Detective Disken, I think it is, that I noticed I didn't have the keys, so I apparently lost them at the time. I'm just assuming.

* * *

Q Let's go back. Friday evening. You thought you put the keys in your purse? A I'm assuming it was my purse, because that's what I thought I did.

Q But you recall you removed them from the truck? A Definitely - oh, definitely. There's no doubt about that.

* * *

Q Did you at this time look for the keys?

A No. Um, not once. I think I was a little upset about the car. I don't know, you know, I didn't look for the keys until the next day, when I went to Disken, I spoke with Disken; and he asked if I had the keys and I said, "Yeah," and I looked in -- you know, I held him on the phone, I was talking to him on the phone, I went to my bag to get them, and they were gone; and at that point I told -- I assumed I'd lost them.

(Title 18, United States Code, Section 1623)

FOREMAN

PAUL J. CURRAN
United States Attorney

A14

LUGENIA BARNES, called as a witness,
having been duly sworn by the Foreman of the Grand Jury,
testified as follows:

BY MR. FORTUIN:

Q Would you state your name for the record, please.

A Lugenia Barnes [spells].

Q Is it Miss or Mrs.? A Miss.

Q Miss Barnes, my name is Tom Fortuin, I'm an Assistant United States Attorney. This is a United States Grand Jury. Let me first tell you what the Grand Jury is investigating and explain your rights to you. The Grand Jury is investigating various violations of the federal law, and all of these really grow out of the death of a couple of weeks ago of a Mr. Peterson and a Mr. Wilson, an event I think you're familiar with. A Right.

Q The statutes we're concerned with involve violation of the civil rights laws, a conspiracy to deprive somebody of his civil rights, Section 241, Title 18, United States Code; and we're investigating obstruction of criminal investigations, which would be Section 1510 of Title 18, United States Code; we're investigating influencing a witness, which would be Section 1503 of Title 18, United States Code; and we're investigating violation of the narcotics laws. These statutes may not be particularly meaningful, and I think I've told you the event we're going to focus on. Now, in connection with that, I advise you that you have a constitutional right to refuse to

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A15

Lugenia Barnes

A15

answer any question that I may ask you on the ground that a truthful answer to that question might tend to incriminate you. Do you understand that? A I believe so.

Q If you do answer a question, it's being taken down by a stenographer and it can be later on used against you in a court of law. Do you understand that? A I do.

Q Now, you have a right to have an attorney and you have a right to consult with him prior to answering any questions here. Do you understand that? A I do.

Q And if you do not have funds to retain an attorney, an attorney will be appointed to represent you by the Court, and you're allowed to have that attorney outside the Grand Jury room where you could consult with him. Do you understand that? A Yes, I do.

Q He couldn't come in here, but he could be outside and you could consult with him in that manner. Do you understand? A Right. Excuse me - I was only notified this afternoon at twelve o'clock that I was to appear here, so I didn't have an opportunity to speak to my attorney or anything, and I really don't know whether or not I should answer any questions. I called him, until the time that I came in, to be advised, but he was not there.

Q And who was your attorney? A Melvin Katske.

Q How do you spell that? A M-E-L-V-I-N K-A-T-S-K-E.

Q Would you like an opportunity -- would you like to have an adjournment, during which time you can talk to your

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lawyer? A No, but I think that at -- if I feel, during the questioning, that --

Q If -- A -- I need an attorney, I would like to have one. Do I have that right?

Q If at any time you'd like to consult with him or call him on the phone or seek an adjournment, you can do that. You can interrupt us and you can do that. Do you understand that?

A Yes, yes.

Q Will you tell us where you live. A 340 East 184th Street, Bronx, New York, 10458.

Q And how are you employed? A I work for the General Services Administration, Government - the Office of Civil Rights.

Q Okay. Now, directing your attention to the early part of August of this year, did there come a time when you rented a U-Haul truck? A Yes.

MR. PORTUIN: Madam Reporter, would you mark this as Grand Jury Exhibit No. 1 and hand it to the witness.

[So marked]

Q Now, does Grand Jury Exhibit No. 1 contain your signature? A Yes.

Q And that's a copy of the rental agreement for the truck, is that correct? A Yes.

Q And do you recall now when you rented the truck?
A Can I refresh my memory?

Q Yes, you can. A [Looking at exhibit] August 8th.

Q Of this year? A Yes.

Q And how long did you rent it for? A I rented it for overnight, twenty-four hours.

Q And what was the purpose of your renting that truck?
A To move some clothing.

Q Where were you going to move the clothing from?
A From 11 West 118th Street to my address, 340 East 184th.

Q And what's at 11 West 118th Street? A An apartment of my boyfriend's.

Q What's your boy friend's name? A Charles Thomas.

Q And how long have you known him? A Approximately a year and a half.

Q And what's the apartment number on 118th Street, do you know? A Excuse me - it's the third floor. I don't know the apartment.

Q Does he have any other address or is that where he lives? A That's his former address. His present address is 340 West 184th Street. Is that clear?

Q Now, you rented the car on a Friday evening, as you recall, is that correct? A No, it was in the afternoon.

Q Oh, it was the afternoon. Do you recall approximately what time? A Well, it should state it on here [looking at exhibit]. One o'clock.

Q Incidentally, I didn't tell you in the beginning, and I should have - you were sworn as a witness at the beginning and you're testifying under oath. You understand that.

A Yes.

Q Were you to make false testimony, purposely and knowingly, that would be a federal crime; you understand that?

A Yes, that's why I referred to this [indicating exhibit], so I would --

Q You understand that? A Yes.

Q When you picked up the van, were you with Mr. Thomas or -- A Yes.

Q -- were you alone? A No, I was with Mr. Thomas.

Q Did you drive the van or did he? A He drove from the gas station, and then I drove afterwards.

Q And where is the gas station? A It's on Webster Avenue and Gunhill Road.

Q And that's in the Bronx? A Yes, I'm sorry, Bronx.

Q And that's where you rented the van. After that where did you go, you and your boy friend? A We went down to his old apartment.

Q And his old apartment is which apartment? A 11 West 118th.

Q And what happened when you got there? A We packed some clothes.

Q You parked the van, I take it? A Yes, we parked the van and packed in clothing.

Q Now, prior to that, did you also drive around in the van to get used to -- A I drove it. Well, I was going to do the driving, so I was going to drive around to get used to the van, because I wasn't, you know, sure I'd be able to handle it.

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Q Where did you drive around, in the area of the Bronx?

A In the area of the Bronx, around Webster Avenue area.

Q About how long did you do this? A --

Q Roughly. A Forty-five minutes, maybe an hour, maybe less.

Q And do you have any idea how far you went, how many blocks? A No.

Q Okay. Then it was after that that you drove to 11 West 118th Street? A Yes.

Q Were you driving? A At that point I was driving, yes.

Q And did you load anything into the van at that time?

A No.

Q What was the purpose of going to 118th Street?

A Well, to determine whether or not the van was large enough, first of all, for the things we were moving; but I had a doctor's appointment that same day, and we were pressed for time, so we moved our things - excuse me, his things - at that time.

Q After you went to 118th Street, where did you go after that? A Um, well, we stopped to eat--

Q Did you first -- A -- at McDonald's.

Q Did you go to Charley's mother's house? A Oh, I'm sorry. We stopped at his mother's house, a block away.

Q And that's located -- A That's on 118th Street. It's 103. Then from there we went and ate.

Q Where did you go to eat? A 125th - McDonald.

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A20

Q Now, after you went to McDonald's, where did you go?

A Then we went back to the Bronx, to my -- my apartment, which is 340 East 184th.

Q Now, all this time ^{you} were driving the truck, is that right? A Yes. Yes.

Q And then there came a time you went to your doctor's office, is that correct? A Yes.

Q And what is his name? A Uh, Kubel, Dr. Kubel [spells].

Q And do you know where his office is? A Yes, he's on 182nd and Grand Concourse.

Q And did you drive there with Mr. Thomas? A Yes.

Q And do you know how long you stayed there, approximately? A Well, I was late for my appointment. I got there, approximately, I would state - it had to be after three, four; because I was late, the doctor left. I guess I was there ten or fifteen minutes.

Q And after you left the doctor's office, where did you go after that, do you know? A Went back to my apartment, 340 East 184th.

Q And how long were you there, do you recall? A I'm sorry. After the doctor we went back downtown - I'm sorry.

Q You didn't go back to your apartment, you went back to 11 West 118th Street? A Yes.

Q Every time you went to these places, what did you do with the van, parked it outside? A Yeah.

8-21-75

A20.1

Q Were there places there, or did you have to drive around, looking? A Some places we parked, you know, right near wherever I was going, and I had to park wherever there was a space - you know, around the corner.

Q I understand. A We parked the van, yes.

Q When you got to 118th Street, -- A We moved the clothing.

Q -- you loaded up the truck? A Yes.

Q You went from there to your house, is that correct?

A Yes.

Q Do you remember the route you took to get there?

A I didn't take the highway because I wasn't sure whether or not I could use, you know - the van is like a commercial vehicle; so I went Amsterdam Avenue, Cross Bronx Express, Webster Avenue, and up Webster Avenue to 184th.

Q To where? A 184th, my home.

Q I don't know the Bronx too well - forgive me.

A I know.

Q You went up Webster Avenue and then north on Webster to Tremont? Would that be correct? A North on Webster to 184th. Tremont is in between my - 184th and the Cross Bronx Express.

Q And when you got there, what happened? Did you park the truck or just leave it on the street? A At my home?

Q Yes. A Yes, I parked it.

Q Did you have to look around for a space? A We

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A21

were moving clothing, so we moved them, you know.

Q You left it right in front? A Right in front of the building.

Q And after you unloaded the truck, what did you do?

A Well, it was kind of late then and we'd been out all day. We went back upstairs, because at that time there was no parking space, we couldn't find one. I left it right in front of my door - not directly in front of my door; I live on top of a steep -- I left it at Tibaut [spells] and 184th.

Q Did you have to drive around to find a parking space?

A Yeah, so I eventually left it there. Now, this was okay. I came back, we unloaded the things.

Q I understand. A Couldn't find a space, so I left it at an illegal space, temporarily, --

Q We're not investigating parking violations.

A -- with the purpose of coming back down later on when there was, you know, - to look for a permanent space, you know, overnight.

Q How long would you say you drove around, looking for that space? A About fifteen or twenty minutes.

Q You went around the block several times, would you say? A Yeah.

Q And then you went up to your apartment, is that correct? A Yes.

Q And then was there a time when you went back down to the truck? A Yes, later on that evening I reparked it for the night.

Q And that would be -- do you remember the approximate time? A Exactly, no.

Q Let's say approximately 12:30? A It was late, yes. It was late - I'd say around 12:00, 12:30.

Q Do you remember where you parked that time?

A I -- yes, between 183rd and 184th on Valentine Avenue.

Q About how long did it take you to find that spot?

A Not long.

Q Now, you were driving the truck all the time?

A Well, I drove it, but I didn't park it because I couldn't park it.

Q Mr. Thomas parked? A So my boy friend parked it.

Q And when you parked it, now, on 183rd and 184th Street did you take the keys to the truck? A Yes, when we got out, I took the keys.

Q And what did you do with them, do you recall?

A Well, I attempted to put it in my bag - I assumed I put them in my bag. I had a flap bag, I lifted the flap up and threw it in. It wasn't until the following day, I think it was, when I spoke with Detective Disken, I think it is, then I noticed I didn't have the keys, so I apparently lost them at the time. I'm just assuming.

Q Sometime between that night and the following morning when did you speak to the detective? A Um, oh, it was following day. I think he called me on Sunday, I'm not sure. Uh, --

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Q Okay, let's get the -- A I reported it that Saturday -- the next day, that was a Sunday.

Q Let's go back. Friday evening you thought you put the keys in your purse? A I'm assuming it was my purse, because that's what I thought I did.

Q But you do recall you removed them from the truck? A Definitely - oh, definitely. There's no doubt about that.

Q Then you went to your apartment? A That's right.

Q Did you leave your apartment after that? A No. Not until the next morning.

Q About what time did you leave? A It was around seven-ten or something like that. I had to return the van before eight or I'd be charged for the next day.

Q What happened when you looked for the van? A It wasn't there.

Q But you're absolutely certain that it was there approximately twelve-thirty the previous night? A When I parked the thing?

Q Yes. A Yeah.

Q What did you do then, when you noticed the van was missing? A Well, we walked around the vicinity for a while, because it's common for cars to get stolen in that area, but we didn't find it; so I, you know, came back home and I called the police station. Excuse me - I called the car rental, because I didn't have any information on it. My receipt was in the van, so I had to call the car rental and

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get whatever information I could, you know, in terms of the license plate and all that. Then I reported it to the nearest police station - I think it's the 46th Precinct.

Q Now, you're saying your agreement - that would be Grand Jury Exhibit 1 - you'd left inside the van? A Yeah, it was in the van.

Q Where did you leave it in the van? A I don't know, I think it was on the dashboard or -- well, I don't know, if I recall, the dashboard in the van, I remember, had a --

Q In front, underneath the windshield in the cabin? A In front, near the steer wheel.

Q The first thing, after you looked in the neighborhood, you called the gas station where you'd rented the U-Haul? A Right.

Q What did they say? A Well, I told them that, you know, the van had to be stolen and I needed the information on the license plate and all that so I could report it.

Q Did they give you that information? A Well, that's -- at that time, that was the week-end, and I was told they didn't have the information either; all they could give me was the truck number, and I think that was it. Oh, and the year and the type of van.

Q Then what did you do with that? Did you try to call the police? A Yes, definitely. I called 46th Precinct, and again I didn't have, from what I was told, I didn't have

enough information at that time, and --

Q That's what the police officer told you when you spoke to him, is that correct? A Yes. At any rate, he took the information I had on the truck and he said, you know, he'd be able to get the rest of it, and I gave him the information about the car rental place as well, where I rented it from, the location.

Q You told him where the truck had been rented and whatever the information? A Right.

Q Did you at this time look for the keys? A No. Um, not once. I think I was a little upset about the car. I don't know, you know, I didn't look for the keys until the next day, when I went to Disken, I spoke with Disken; and he asked if I had the keys and I said, "Yeah," and I looked in you know, I held him on the phone, I was talking to him on the phone, I went to my bag to get them, and they were gone; and at that point I told -- I assumed I'd lost them.

Q This is Sergeant Donald Disken, is that correct? Is that the person you're referring to? A I'm not sure his first name.

Q But it's D-I-S-K-E-N? A Right.

Q Just going back to the first report you made, the police officer then said he'd handle the rest of it, is that right? A Yeah, he said he could get the rest of the information.

Q What did the service station tell you to do? Did

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they tell you there was no problem, the insurance company would cover it? A Um, I'm not sure if I understand your question.

Q When you spoke to the service station, what did they say you should do about the stolen truck? A Well, I explained to him, you know, what had happened, and I was told that they could not get the information, any additional information, until Monday, and, you know, I was to call back then; but, let's see, I think it was either, excuse me, Saturday or Sunday, the following day, I was notified by Detective Disken that they found the van.

Q Where did Detective Disken contact you? A At my home.

Q And did he come to see you there? A No, he telephoned. What he -- oh, excuse me, I forgot. Two patrolmen came to my home and told me that I was to call a Detective Disken at this and so number - I don't have the number - and I then, you know, called him then. Right.

Q And did there come a time when you were interviewed by him? A Yes.

Q And where was that? A 126th Street, I think it's between Amsterdam and Old Broadway.

Q That's the precinct building? A Yes, I think it was the 26th.

Q And at that time you gave him a statement and told him, in substance, what you've told us, is that correct?

A Right.

Q And you took a shorthand version of the statement?--

A Right.

Q -- that you'd given him?

A Right. Well, not --

Q Why did you do that?

A Well, because they re-

fused to give me a copy of it.

Q And why did you want a copy?

A I thought it would

be wise, because the interview didn't seem very much like an interview, you know. I was there for a pretty long time, and

at the end of it I wanted a statement, I want a copy of the statement that he'd taken there.

Q What did you subsequently do with that statement?

A I don't even have it.

Q You don't have it with you now?

A No.

Q Did you review it prior to coming here today?

A Oh, no.

Q Did you give it to anyone else?

A No.

Q You didn't give it to Mr. Thomas?

A No.

Q Do you know where it is now?

A Probably in the

garbage somewhere.

Q So you threw it away?

A Yes. I know I don't

it now.

Q I don't understand why this statement, which you have thought was important to take down, why you threw it away.

A Actually, I just wanted a copy of the state-
and he refused to give it to me.

Q Why did you want a copy of that statement?

A It's like signing your name on something; you want to get copies of it. That's the reason for getting.

Q You subsequently threw that away? A I didn't take the whole thing down. Like you stated - it was half shorthand and half in English. I couldn't even read it when I got back home.

Q Did you go over that statement with any other person? A No. I attempted to read it again, myself, but I had a little difficulty reading. I don't take shorthand, really, how --

Q After you came back from the precinct house, did you talk to Mr. Thomas? A Later on that evening.

Q And -- A Because, excuse me, he wanted to speak with Charley to confirm my statement.

Q The police sergeant, Mr. Disken, wanted to speak to Charley? A Right.

Q And did you speak to him, Charley, prior to the time that he spoke to Mr. Disken? A Yes. Well, I don't know whether or not he spoke with Mr. Disken. I really don't know who he spoke with. In any case, we came back that same evening, but the sergeant had left and the person who we did speak to suggested that he come back on the following day, which he did, and I didn't go with him.

Q But when you saw Mr. Thomas after you'd spoken to Disken, did you recite to him what you'd told Mr. Disken?

A No - well, I told him that I had had to make a statement.

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as to what we'd did with the van.

Q Did you and he review together what you'd done with the van? A No, that wasn't necessary.

Q You didn't go over it with him? A No.

Q Incidentally, did you call him and tell him you were coming here today? A Well, I tried to get in touch with him, because I spoke to Mr. Bier [phonetic] --

Q Behan. A -- who said that they'd wanted him to appear too, and when they were trying to get in touch with him, so I told them I'd try to call him, but I couldn't reach him.

Q Thank you for coming down today.

MR. FORTUIN: And would you ask the witness to please wait outside.

FOREMAN: Would you please wait outside.

[WITNESS EXCUSED]

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- 0

CORRECTIONS AFTER COMPARING

[Witness Lugenia Barnes, 8-21-75, by Mr. Fortuin]

[1] Page 1, Line 13 - Delete "of" to read:
"grow out of the death a couple of weeks ago"

[2] Page 11, Line 4 - Insert "in" in answer, to
read: "I'm assuming it was in my purse"

[3] Page 11, Line 23 - Typo. Add "e" to make
"came" rather than "cam."

[4] Page 15, top - Insert question and answer
omitted during transcribing [tsk!] as follows: "Q and after
you were done with that statement, you asked him if you could
copy it down, is that correct? A Right."

[5] Page 15, bottom line - Delete final word:
"A It's" - inasmuch as same was repeated at top of following
page.

[6] Page 17, Line 7 - Insert words, "I think it was"
to read: "I spoke to - I think it was Mr. Bier"

August 29, 1975

Charles Thomas

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GRAND JURY TESTIMONY OF CHARLES THOMAS

CHARLES THOMAS, called as a witness,
having been duly sworn by the Foreman of the Grand Jury,
testified as follows:

BY MR. FORTUIN:

Q Would you state and spell your name for the record,
please. A Charles Thomas [spells]

Q Mr. Thomas, where do you live? A Uh, now 340
East 184th Street.

Q Now, Mr. Thomas, my name is Thomas M. Fortuin, I'm an
Assistant United States Attorney. This is a United States
Grand Jury. Let me first tell you what this Grand Jury is
investigating and explain your rights to you so you understand
what this proceeding is about. The Grand Jury is investigating
violations of federal law. Among those violations is the
federal conspiracy statute, the obstruction of justice statute
and several other statutes that I'll list for you just so you
know what they're investigating. They're also investigating
violations of Section 241 of the United States Code, which has
to do with conspiracies to deprive citizens of their civil
rights. They're investigating violations of Section 1510 of
Title 18 of the United States Code, which relates to the ob-
struction of criminal investigations. They're investigating
violations of Section 1503 of Title 18 of the United States
Code, which relates to influencing of witnesses, and they're
investigating violations of Title 21 of the United States Code,
which have to do with violations of the narcotics law. In

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connection with that, I advise you that you are one of the targets of this investigation. As a result of that, you have certain constitutional rights that I want to make sure you understand. You have a right to refuse to answer any question that I ask you on the grounds that a truthful answer to that question might tend to incriminate you. Do you understand that? (A Yes. Yes.

Q If you do answer a question, it's being taken down by a court reporter and it can be later used against you in a court of law. Do you understand that? A Yes sir.

Q You have a right to an attorney, and I want to ask you if you have counsel. A Yes.

Q And what is the name of your lawyer? A Miss Nancy Rosner and associates; however, it's

Q And Mrs. Rosner has sent one of her associates here today? A Right.

Q And he's outside the Jury? A Yes sir.

Q And you've consulted with him, is that correct?

A Yes sir.

Q I want you to understand if at any time you want to confer with him further, we'll call a recess and you can go outside the Grand Jury room and consult further with him. Do you understand that? A Yes sir.

Q Now, I want to direct your attention to the events beginning approximately August 8, 1975, and at that time you rented a U-Haul van in the Bronx, is that correct? A Yes sir.

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11 Q And thereafter you were interviewed with respect to those events by members of the New York City Police Department, is that correct? A I don't know whether I should answer that question, because the advice I had from my lawyer.

12 Q As I understand it, your lawyer -- do you want a short recess so you can go speak with him? A To be sure, because I'm not --

13 Q Certainly, to be sure. We'll declare a short recess and --

FOREMAN: You can go outside and consult with your attorney and come back.

[Witness leaves room, then returns]

WITNESS: Excuse me.

14 Q Now, you've had an opportunity to consult with your attorney, is that correct? A That's right.

15 Q I did want to advise you of one further thing before we proceed, which I think you understand. You took an oath at the beginning of these proceedings to tell the truth. Should you not tell the truth, that would be a violation of the federal perjury statute and you could be prosecuted for the federal crime of perjury. (A) Yes sir.

16 Q Do you understand? (A) Yes.

17 Q I ask you if you were interviewed about the rental of this truck by members of the Police Department. A Yes, I have been.

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Q And you told them that you and your girl friend picked the truck up in the Bronx, correct? A Yes.

Q And what is your girl friend's name? A Lugenia Barnes [spells].

Q Then you told the officers that after the two of you rented the truck, you went from the truck rental place in the Bronx to your house downtown, is that correct? A Right.

Q And that's 11 West 118th Street in Manhattan, correct? A Uh, yes, you talking about straight to my house?

Q I'm sorry? A Are you saying straight to my house?

Q Then you told them that you had to stop at your mother's house? A No, no, I'm saying - from the truck rental place, are you saying that I went straight from the truck rental place to my house?

Q Tell us what happened. A It wasn't like that. She had to -- this was not automatic gear or, rather, turning wheel. It's not power steering. So she tried it out in the Bronx first, before she came down; I drove around the station so she tried.

Q So you drove around in the Bronx? A Right.

Q And then you proceeded -- A Right.

Q -- on to 11 West 118th Street? A That's right.

Q And you made a stop at your mother's house, but she wasn't home? A Right.

Q Then you went back uptown to the Bronx? A Right.

Q And went to -- A Doctor.

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Q -- Miss Barnes' doctor, is that correct? A Right.

Q Do you recall where that's located? A Uh, on the Concourse. Big white -- I can't remember the street number.

Q On the Grand Concourse in the Bronx? A That's right.

Q You then went back downtown; was that to your apartment? A Pardon me?

Q You then went back downtown? A Right.

Q Where did you go? A To my apartment.

Q It was there that you loaded the truck, is that right?

A Right.

Q After you loaded the truck, you went back uptown, is that right? A Yes.

Q Where did you go uptown? A Back to the house, our new apartment - my new apartment.

Q Where is that located? A 340 East 184th Street.

Q There you unloaded the truck, is that correct?

A Yes.

Q You parked the truck and went to sleep, is that correct? (A) Yes.

Q And you parked it on Valentine Avenue between 183rd and 184th Street? A Yes, in between. 184th, 183rd.

FOREMAN: Could you raise your voice and speak a little louder.

WITNESS: 184th and 183rd and Valentine.

Q All these events occurred on Friday, August 8, is that correct? A Yes sir.

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Q And then at about one o'clock, what would be the following morning, you went to move the truck, is that correct?

A Right.

Q It was then you noted that the truck was gone, is that correct? A Yes.

Q That was the first time you noticed it was missing? A Yes.

Q Do you know, approximately what time did you park it outside, did you leave the truck? A Uh, about seven, eight - around six or seven, something like that. Between six and eight.

Q Friday evening? A Right.

Q And you then reported it to the 46th Precinct, is that correct? A What?

Q You reported the theft to the precinct? A Oh, yes. When we realized it was missing, we reported it.

Q Okay, now, all the statements that you made to the police officers were true, is that correct? A Yes sir.

Q And you don't want to make -- or let me ask you, do you want to make any additions or corrections at this time?

A None I can think of. There are none I can think of.

Q Now, I just want to put on the record that your lawyer and I have an understanding that you would answer these questions with respect to the matters that the police asked you about, is that correct? A Yes.

Q And your lawyer has advised you to invoke the Fifth

Amendment as to any other questions, is that correct?

A Yes sir.

Q So that were I to ask you any additional questions, you would claim your Fifth Amendment privilege, is that correct? A I would take the advice of my lawyer. I would.

MR. FORTUIN: Would you excuse the witness, then, and ask him to wait outside.

FOREMAN: Please wait outside.

[WITNESS EXCUSED]

Statement given to New York City Police Department
by Lugenia Barnes

August 10, 1975 5th Homicide Zone				210	20	210
PREVIOUS CLASSIFICATION						
HOMICIDE-GUNSHOT						
CLASSIFICATION CHANGED TO				50 *	52 *	53 *
<input checked="" type="checkbox"/> 51 CLOSE	<input checked="" type="checkbox"/> 56 PREV CLOSE	<input checked="" type="checkbox"/> 57 RE-OPEN	<input checked="" type="checkbox"/> 58 *	DO NOT ENTER PROPERTY PREVIOUSLY REPORTED		
REFERRAL CHANGE FROM _____ TO _____				60 TYPE OF PROPERTY	62 VALUE STOLEN	63 VALUE RECOVERED
CASE STATUS:				01 Motor Veh. stolen or recov.		
<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> CLOSED <input type="checkbox"/> UNFOUNDED				02 Motor Veh. recov. by owner		
ALARMED _____ DATE TRANSMITTED _____				04 CURRENCY		
				05 JEWELRY		
				06 FURS-CLOTHING		
				07 FIREARMS		
				08 OFFICE EQUIPMENT		
OFFICER'S NAME (Printed) RANK FIRST, LAST				09 TV, RADIO, CAMERAS ETC.		
DET. JOSEPH A. GULIN				10 HOUSEHOLD GOODS		
COM'D. 5 H/Z				11 CONSUMABLE GOODS		
TAX REG. NO. 834132				12 LIVESTOCK		
				13 MISCELLANEOUS		

DETAILS AS REPORTED BY FOLLOW-UP INVESTIGATING OFFICER

HOMICIDE: OSCAR WILSON AND OSWALD PETERSON

SUBJECT: TELEPHONE INTERVIEW OF LUGENIA BARNES

- At 1645 hours, of Sunday, August 10, 1975, the undersigned did contact one LUGENIA BARNES of 340 East 184th Street, Bronx, N.Y. via 298-9040, relative to her contract # 3 3201331 U-HAUL truck rental of a 1969 Ford Van bearing Registration COM 81-703 Maine 1975, made at the GUN HILL SERVICE STATION located at 3349 Webster Avenue, Bronx, N.Y. Tel. # TU 1-3033 at 1:00 P.M. of August 8, 1975 for 24 hour period ending 8:00 A.M. of August 9, 1975.
- The aforementioned subject states she rented the above vehicle to move belongings to her residence on August 8, 1975 and parked the vehicle afterward between 1:AM-1:30A.M. of August 9, 1975 on Valentine Avenue between E. 183rd and E. 184th Streets as there was no parking available near her residence.
- At 7:A.M. of August 9, 1975 she returned to take the vehicle back to the GUN HILL SERVICE STATION before the time allowance expired and found the vehicle had been removed from where she had parked it, she called 911 and was given the telephone # 220-5244 of the 46th Precinct which she called between 8:30A.M. and 9:A.M. of August 9, 1975 and gave information to a P.O. Reynolds, but was unable to provide him with the vehicle Reg. or V. the officer contacted on 8-10-75 by the undersigned reports he was unable to obtain that information from the GUN HILL SERVICE STATION consequently

USE REVERSE SIDE IF MORE SPACE IS NEEDED (Carbon must be inverted) (CONT'D)

VOUCHER NO.

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DESCRIPTION OF LOST OR STOLEN PROPERTY (NOT PREVIOUSLY REPORTED)

ARTICLE	QUANTITY	MANUFACTURER & SERIAL NO.	ITEM VALUE	ADDITIONAL DESCRIPTIONS
		8/10/76 BARNES INTERVIEW by 1645 hrs. TELEPHONE.		

DESCRIPTION OF PERSONS WANTED, PERSONS ARRESTED, AND ARREST DISPOSITIONS.

INVESTIGATING OFFICER'S SIGNATURE	SUPERVISOR'S SIGNATURE	COSEX
<i>Joseph A. Isner</i>	<i>Det. A. J. Duke</i>	<i>X</i>

no stolen vehicle report has been filed at this time, the undersigned has verified with P.O. Reynolds that the subject called the 45th Precinct to report the vehicle missing between 8:30 and 9:00 A.M. of August 9, 1975 and requests the subject provide him with the necessary information in order that a report can be taken on the vehicle.

4. A check of the records of NCIC P.O. Abiles reveals No Record on CON 84-11410 VIN # E34ANL35341 at this time.
5. Case ACTIVE, Investigation continuing.

August 10 1975 3rd Homicide Zone

21 6

26

7162

GUN HILL

CIA

<input checked="" type="checkbox"/> SEARCHED	<input checked="" type="checkbox"/> INDEXED	<input checked="" type="checkbox"/> SERIALIZED	<input checked="" type="checkbox"/> FILED	DO NOT ENTER PROPERTY PREVIOUSLY REPORTED	
REFERRAL CHANGE FROM _____ TO _____				TYPE OF PROPERTY	VALUE STOLEN
CASE STATUS				01 MOTOR VEHICLE	VALUE RECOVERED
<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> CLOSED <input type="checkbox"/> UNFOUNDED				02 OTHER VEHICLE	
DATE TRANSMITTED				03 CURRENCY	
OFFICER'S NAME (Printed) RANK FIRST LAST				04 JEWELRY	
DET. JOSEPH A. GUNN				05 FURS-CLOTHING	
COM'D 5th H/				06 FIREARMS	
TAX REG. NO. 834152				07 OFFICE EQUIPMENT	
				08 TV, RADIO, CAMERAS ETC.	
				09 HOUSEHOLD GOODS	
				10 CONSUMABLE GOODS	
				11 LIVESTOCK	
				12 MISCELLANEOUS	

DETAILS AS REPORTED BY FOLLOW-UP INVESTIGATING OFFICER

HOMICIDE-OSCAR WILSON AND OSWALD PETERSON

SUBJECT: INTERVIEW OF LUGENIA BARNES AT 5th HOMICIDE ZONE OFFICE

1. On August 10, 1975 between 1825 and 1950 hours, LUGENIA BARNES a F-B-26, DOB 7-5-49, of 340 East 124th Street Apt 6L, tel. # 293-9040, was present at the 5th Homicide Zone Office and voluntarily gave the following information when interviewed by Sergeant Donald Dishon, Shield # 1205, Detective Joseph A. Gunn, Shield # 1542, Robert Rohan, Shield # 1545 and Roy Robinson, Shield # 2520, all assigned to the 5th Homicide Zone.

2. On August 9, 1975 at 1:20 P.M. I rented a 1969 Ford Van from the GUN HILL VEHICLE RENTAL at 3949 Webster Avenue Bronx, NY for one day Contract # 3 300 334 which ended 8:00 A.M. August 9, 1975, in order to move some belongings from my boyfriend's residence at 41 West 118th Street N.Y.C. to my residence. After receiving the vehicle I drove it around for a while to get used to it with my boyfriend CHARLES THOMAS H-B-35 DOB 3-9-40, we then drove downtown to 41 West 118th Street to see if the truck could carry all the things we wanted to move, then stopped for a short time at CHARLIE'S mother's house on 118th Street between 5th and Lenox Avenues, then drove to MacDonalds on W. 125th Street, picked up some food to take out, and returned to my residence for over an hour, after which we drove to my Doctor's Office, Dr. KUBER, 31 Street, between Crescent Avenue and Grand Concourse, he had left for the day and we drove back to 41 West 118th Street, loaded the truck with clothing and a chair and drove back to my house by way of Amsterdam Avenue to W. 125th Street.

DESCRIPTION OF LOST OR STOLEN PROPERTY (NOT PREVIOUSLY REPORTED)				VOUCHER NO.
ARTICLE	QUANTITY	MANUFACTURER & SERIAL NO.	ITEM VALUE	ADDITIONAL DESCRIPTIONS
	8/10/76	BARNES Interview At 5th Homicide Office		
	1825 hrs.			

DESCRIPTION OF PERSONS WANTED, PERSONS ARRESTED, AND ARREST DISPOSITIONS.

REPORTING OFFICER'S SIGNATURE <i>Joseph A. [Signature]</i>	SUPERVISOR'S SIGNATURE <i>Sgt. [Signature]</i>	COPIES OF REPORT <i>[Signature]</i>
---	---	--

crossed the Crown Point Expressway to Webster Avenue, North of Webster Avenue to Thompson Avenue, West on Valentine Avenue to my residence.

3. We unloaded the vehicle, brought the belongings into my apartment and inside listening to the radio and some records until about 12:30AM when I took the vehicle away from my house and looked for a parking place and found one on Valentine Avenue between 103rd and 104th Street at 1:00AM and after parking the vehicle we looked it up and Charles gave me the and I put them into my purse and we walked home together.
4. At 7:00A.M. of August 9, 1975 we returned to where we had parked the vehicle to return it to the GUN HILL SERVICE STATION before my time limit, but found the vehicle had been removed from where we had parked it.
5. I called 911 and was given a telephone # 220-5211 (45th Precinct) and I told P.O. Reynolds to report about the vehicle but I did not have the registration number or the VIN # of the vehicle so the police officer said I would get it from the GUN HILL SERVICE STATION and make the report.
6. I am employed as an Equal Opportunity Specialist for the past 3 years at the CENTRAL SERVICES ADMINISTRATION located at 26 Federal Plaza NYC. I investigate companies that have Government contracts. I have known CHARLES THOMAS since 1970, he has been living with me at 340 East 107th Apt. 6L for the past month.
7. A check of the Contract # 3 3804331 for the aforementioned vehicle made by LUCIANA BARNES indicates at the time she took possession of the vehicle the odometer was 65069, when the vehicle was recovered by the police at 122nd Street and Claremont Avenue on August 10, 1975 the odometer was 67 a total of 14 miles, no ignition keys found in vehicle, no evidence of jump of the ignition system found under dashboard, hood was cable locked.
3. Case ACTIVE, Investigation continuing.

*PARN. My gives the
STARTING Odometer
and Odometer of Van when found.*

*This is the interview that
BARNES made her notes of -
Notice it is about 19 hours of
Thomas's statement.*

A42

Statement given to New York City Police Department by
Charles Thomas

3514

8/11/75 5th Homicide Zone 209

PREVIOUS CLASSIFICATION: Homicide

CLASSIFICATION CHANGED TO

55 CLOSE 56 PREV CLOSE 57 RE OPEN 58*

DO NOT ENTER PROPERTY PREVIOUSLY REPORTED

60 TYPE OF PROPERTY 62 VALUE STOLEN 64 VALUE RECOVERED

REFERRAL CHANGE FROM TO

CASE STATUS:

☒ ACTIVE ☐ CLOSED ☐ UNFOUNDED

ALARM NO DATE TRANSMITTED

OFFICER'S NAME (Printed) RANK, FIRST, LAST COM.D.

Detective Robert Bohan 5th H/2

TAX REG. NO. 832619

01 Motor Veh. stolen or recov
02 Motor Veh. stolen by other authority
04 CURRENCY
05 JEWELRY
06 FURS-CLOTHING
07 FIREARMS
08 OFFICE EQUIPMENT
09 TV, RADIO, CAMERAS, ETC
10 HOUSEHOLD GOODS
11 CONSUMABLE GOODS
12 LIVESTOCK
13 MISCELLANEOUS

DETAILS AS REPORTED BY FOLLOW-UP INVESTIGATING OFFICER

HOMICIDE OF OSCAR WILSON AND OSWALD PETERSON
SUBJECT: STATEMENT BY THOMAS, CHARLES

1. On this date the undersigned together with detective Roy Miersen interviewed Mr. CHARLES THOMAS of 340 E 184 street, Bronx at the office of the fifth homicide zone about 1500 hours and he made the following statement.
2. We went from the Bronx to my house downtown, 11 W 118 street Manhattan and had a stop at my Mother's house, she wasn't home. went back uptown (Bronx) and went to the doctor. Went back downtown, loaded the truck back uptown unloaded truck and went to sleep, parked on Valentine 184-183rd street, went to move it about 0100 hours and truck was reported it to the 46th Pct. End of statement.

-Case Active-

USE REVERSE SIDE IF MORE SPACE IS NEEDED. (Carbon must be inverted)

A43

DESCRIPTION OF LOST OR STOLEN PROPERTY (NOT PREVIOUSLY REPORTED)				VOUCHER NO.	
ARTICLE	QUANTITY	MANUFACTURER & SERIAL NO.	ITEM VALUE	ADDITIONAL DESCRIPTION	
<p><i>This is the interview when Dets. Thomas said to Dets. that whatever she (Bain) said is what we did! This statement was made at the close of the interview by Thomas - Almost in resignation.</i></p>					

DESCRIPTION OF PERSONS WANTED, PERSONS ARRESTED, AND ARREST DISPOSITIONS.

INVESTIGATING OFFICER'S SIGNATURE <i>Robert B. Lane</i>	SUPERVISOR'S SIGNATURE <i>Sgt. A. J. Duke</i>	RECEIVED _____
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C H A R G E O F T H E C O U R T

THE COURT: Mrs. Cohen, ladies and gentlemen.

We are now at the stage of the trial where you are about to perform, to undertake your final function as jurors. This is one of the most sacred obligations of citizenship: Acting as ministers of justice. You are to discharge this final duty in an attitude of complete fairness and impartiality; and as I emphasized to you before, without bias or prejudice for or against the Government or the defendants.

As I told you before, the fact that the prosecution is brought in the name of the Government of the United States of America, entitles it to no greater consideration than that accorded to any other party. But also, it is entitled to no lesser consideration. All parties, the Government and the individual defendants, stand as equals here in this courtroom.

Your role, as you know, is to decide the facts. My function at this point is to instruct you as to the law, and it is your duty to accept these instructions and to apply them to the facts as you determine them. With respect to any fact matters, it is your recollection and yours alone that governs. As I told you many times, anything that counsel have said in addition to anything that I have said, is not evidence. The evidence is what you heard from the

witnesses and what is in the documents

I would like to remind you that we have here two separate indictments. One is to one defendant, Miss Barnes, and one is to the other defendant, Mr. Thomas. You must consider each separately. Guilt, if any, is personal. The guilt or innocence of Miss Barnes or Mr. Thomas must be determined solely as to each, solely upon the evidence presented against each of them, or the lack of evidence. The charges against each stand or fall upon the proof or lack of proof against that defendant, and not against the other defendant, or indeed, anybody else.

I would like to remind you of some general principles that I have already told you about. The indictment is only an accusation. It is only a charge. It doesn't prove anything. Each defendant has pleaded not guilty, and thus the Government has the burden of proving beyond a reasonable doubt as to each defendant whether or not they are guilty. They can be found guilty only if you find beyond a reasonable doubt that they are guilty.

The defendants do not have to prove their innocence. As I have told you, they are presumed to be innocent of the charges made in the indictment. This presumption, as I have told you, was in their favor at the outset of the trial. It is still in their favor

1 favor. It continues in their favor right now. It con-
2 tinues in their favor when you retire to deliberate. The
3 presumption is overcome only if you conclude the Government
4 has established beyond a reasonable doubt the guilt of one
5 or the other or both.
6

7 You have heard a lot about a reasonable doubt.
8 The words almost define themselves. A doubt founded in
9 reason; arising out of the evidence in the case, or the
10 lack of evidence. It is a doubt which a reasonable person
11 would have after carefully weighing all of the evidence.
12 A reasonable doubt is a doubt which appeals to your reason,
13 your common sense, your judgment, your experience. It is
14 not caprice, whim, speculation. It is not an excuse to
15 avoid the performance of an unpleasant duty. It is not
16 sympathy for a defendant. If, after a fair and impartial
17 consideration of all the evidence, you can candidly and
18 honestly say you are not satisfied of the guilt of a de-
19 fendant, but rather, if you have such a doubt as would
20 cause you as prudent persons to hesitate before acting
21 in matters of importance to yourself, then you have a
22 reasonable doubt and in that circumstance it is your duty
23 to acquit

24 On the other hand, if, after such a fair and
25 impartial consideration of all the evidence you can candidly

1 4 elsr

2 and honestly say that you are satisfied of a defendant's
3 guilty beyond a reasonable doubt, that is, because you have
4 such a conviction as you would be willing to act upon in
5 important and weighty matters in the personal affairs of
6 your own lives, then you have no reasonable doubt, and
7 under that circumstance it is your duty to convict.

8 One final word: Reasonable doubt does not mean
9 a positive certainty or beyond all possible doubt. If
10 that were the case, few persons, however guilty they may be,
11 would be convicted. It is practically impossible for a
12 person to be absolutely and completely convinced of any
13 controverted fact which by its nature is not susceptible
14 of mathematical certainty. In consequence, the law
15 in a criminal case is that it is sufficient if the guilt
16 of a defendant is established beyond a reasonable doubt;
17 not beyond all possible doubt.

18 The defendant Barnes here, Miss Barnes, is
19 charged with violating Title 18, United States Code,
20 Section 1623, the perjury statute, which reads in per-
21 tinent part as follows:

22 "Whoever under oath in any proceeding before
23 any Grand Jury of the United States knowingly makes any
24 false material declarations, commits a crime."

25 The indictment charges the defendant Miss Barnes,

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1 5 elsr

2 charges here with three separate counts of perjury. I am
3 going to read the indictment to you. When you retire to
4 deliberate, I will hand you a copy of the indictment so
5 you can take it with you. The indictment reads:

6 "COUNTS ONE THROUGH THREE.

7 "The Grand Jury charges:

8 "1. On or about August 21, 1975 in the
9 Southern District of New York, Lugenia Barnes, the defendan:
10 having duly taken an oath as a witness that she would tes-
11 tify truthfully before a Grand Jury of the United States
12 of America and sworn in the United States District Court
13 for the Southern District Court for the Southern District
14 of New York, and inquiring for that District, unlawfully,
15 wilfully and knowingly and contrary to said oath did make
16 false material declarations as hereafter set forth.

17 "2. At the time and place aforesaid, the said
18 Grand Jury was conducting an investigation of possible
19 violations of the laws of the United States regarding th
20 murder on or about August 8, 1975 of Oswald A. Peterson
21 and of Oscar Wilson, whose bodies were found on August
22 10, 1975 in a U-Haul Van, Maine license plate number
23 COM 81-706 in the vicinity of Claremont Avenue and 122nd
24 Street, New York, New York including among violations of the
25 following statutes: Sections 241 (civil rights conspiracy)
1503 and 1510 (obstruction of justice) and 1625 (perjury),

of Title 18, United States Code and Sections 801-966
of Title 21, United States Code, (sale and distribution
of narcotic drugs and conspiracies so to do) to determine:

"a. whether said murders were committed in
furtherance of said conspiracy, plot or plan to
injury, oppress, threaten or intimidate Peterson and/or
Wilson in the free exercise and enjoyment of any right or
privilege secured to either of them by the Constitution
or laws of the United States, to wit, the right of either
of them to testify about and give information concerning
violations of laws of the United States;

"b. whether said murders were an endeavor
by means of force to obstruct and prevent the communication
of information relating to violations of criminal statutes
of the United States, particularly those relating to
narcotics and dangerous drugs by Peterson or Wilson to a
criminal investigator;

"c. whether said murders were committed on
account of the giving by Peterson or Wilson of such in-
formation to any criminal investigator

"d. whether said murders were committed in
furtherance of a conspiracy to violate the narcotics
laws of the United States.

"3. It was material to said inquiry to

1 7 elsr

2 determine whether the defendant Lugenia Barnes had any
3 knowledge of and participated in:

4 "a. the rental by the said Lugenia Barnes and
5 Charles Thomas on August 8th, 1975 of and use of a U-Haul
6 Van, Maine license plate number COM 81-706, which was
7 discovered on August 10, 1975 in the vicinity of Claremont
8 Avenue and 122nd Street, New York, New York containing
9 the dead bodies of Peterson and Wilson;

10 "b. how and when said van was driven to the
11 vicinity of Claremont Avenue and 122nd Street, New York,
12 New York;

13 "c. how the person or persons who drove said
14 van to the vicinity of Claremont Avenue and 122nd Street,
15 New York, New York obtained possession, custody and control
16 of said van;

17 "d. the identity of said person or persons;
18 and

19 "e. the role, if any, played by the said
20 Lugenia Barnes and Charles Thomas in disposing of the
21 bodies of Peterson and Wilson.

22 "4. At the time and place aforesaid Lugenia
23 Barnes, the defendant, appearing as a witness under oath
24 before the said Grand Jury testified falsely with respect
25 to the aforesaid material matters and did make the

false material declaration."

Count One. I'm going to read that portion of the indictment which contains the testimony.

"Q Okay. Now, directing your attention to the early part of August of this year, did there come a time when you rented a U-Haul truck?

"A Yes.

"Q And what was the purpose of your renting that truck?

"A To move some clothing.

"Q Did you drive the van or did he?

"A He drove from the gas station, and then I drove afterwards.

"Q And where is the gas station?

"A It's on Webster Avenue and Gunhill Road.

"Q And that's in the Bronx?

"A Yes, I'm sorry, Bronx.

"Q And that's where you rented the van. After that where did you go, you and your boy friend?

"A We went down to his old apartment.

"Q And his old apartment is which apartment?

"A 11 West 118th.

"Q You parked the van, I take it?

"A Yes, we parked the van and packed in

1 clothing.

2
3 "Q Now, prior to that, did you also drive
4 around in the van to get used to --

5 "A I drove it. Well, I was going to do the
6 driving, so I was going to drive around to get used to the
7 van, because I wasn't, you know, sure I'd be able to
8 handle it.

9 "Q Where did you drive around, in the area
10 of the Bronx?

11 "A In the area of the Bronx, around Webster
12 Avenue area.

13 "Q About how long did you do this?"

14 [No answer.]

15 "Q Roughly.

16 "A 45 minutes, maybe an hour, maybe less.

17 "Q Okay. Then it was after that that you
18 drove to 11 West 118th Street?

19 "A Yes.

20 "Q After you went to 118th Street, where did
21 you go after that?

22 "A Um, well, we stopped to eat --

23 "Q Did you first --

24 "A At McDonald's.

25 "Q Did you go to Charley's mother's house?

1 10 elsr

2 "A Oh, I'm sorry. We stopped at his mother's
3 house, a block away.

4 "Q And that's located --

5 "A That's on 118th Street. It's 103. Then
6 from there we went and ate.

7 "Q Where did you eat?

8 "A 125th - McDonald.

9 "Q Now, after you went to McDonald's, where
10 did you go?

11 "A Then we went back to teh Bronx, to my --
12 my apartment, which is 340 East 184th.

13 "Q And then there came a time you went to your
14 doctor's office, is that correct?

15 "A Yes.

16 "Q And what is his name?

17 "A Kuble, Dr. Kubel. K-u-b-e-l.

18 "Q And do you know where his office is?

19 "A Yes, he's on 182nd and Grand Concourse.

20 "Q And did you drive there with Mr. Thomas?

21 "A Yes.

22 "Q And do you know how long you stayed there,
23 approximately?

24 "A Well, I was late for my appointment. I
25 got there, approximately, I would state - it had to be

2 after three, four; because I was late, the doctor left.
3 I guess I was there ten or fifteen minutes.

4 "Q And after you left the doctor's office,
5 where did you go after that, do you know?

6 "A Went back to my apartment, 340 East 184th.

7 "Q And how long were you there, do you
8 recall?

9 "A I'm sorry. After the doctor we went back
10 downtown - I'm sorry.

11 "Q You didn't go back to your apartment, you
12 went back to 11 West 118th Street?

13 "A Yes.

14 "Q Every time you went to these places, what
15 did you do with the van, parked it outside?

16 "A Yeah.

17 "Q Were there places there, or did you have
18 to drive around, looking?

19 "A Some places we parked, you know, right
20 near wherever I was going, and I had to park wherever
21 there was a space - you know, around the corner.

22 "Q I understand.

23 "A We parked the van, yes.

24 "Q When you got to 118th Street --

25 "A We moved the clothing.

1 12 elsr

2 "Q You loaded up the truck?

3 "A Yes.

4 "Q You went from there to your house, is that
5 correct?

6 "A Yes.

7 "Q Do you remember the route you took to get
8 there?

9 "A I didn't take the highway because I wasn't
10 sure whether or not I could use, you know - the van is
11 like a commercial vehicle; so I went Amsterdam Avenue, Cross
12 Bronx Express, Webster Avenue, and up Webster Avenue to
13 184th.

14 "Q To where?

15 "A 184th, my home.

16 "Q You went up Webster Avenue and then north
17 on Webster to Tremont? Would that be correct?

18 "A North on Webster to 184th. Tremont is
19 in between my -- 184th and the Cross Bronx Express.

20 "Q And when you got there, what happened?
21 Did you park the truck or just leave it on the street?

22 "A At my home?

23 "Q Yes.

24 "A Yes, I parked it.

25 "Q Did you have to look around for a space?

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1 13 elsr

2 "A We were moving clothing, so we moved them,
3 you know.

4 "Q You left it right in front?

5 "A Right in front of the building.

6 "Q And after you unloaded the truck, what
7 did you do?

8 "A Well, it was kind of late then and we'd
9 been out all day. We went back upstairs, because at that
10 time there was no parking space, we couldn't find one.
11 I left it right in front of my door - not directly in
12 front of my door; I live on top of a steep -- I left it
13 at Tibaut. T-i-b-a-u-t and 184th.

14 "Q Did you have to drive around to find a
15 parking space?

16 "A Yes, so I eventually left it there. Now,
17 this was okay. I came back, we unloaded the things.

18 "Q How long would you say you drove around,
19 looking for that space?

20 "A About fifteen or twenty minutes.

21 "Q You went around the block several times,
22 would you say?

23 "A Yeah.

24 "Q And then you went up to your apartment,
25 is that correct?

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"A Yes.

"Q And then was there a time when you went back down to the truck?

"A Yes, later on that evening I reparked it for the night.

"Q And that would be -- do you remember the approximate time?

"A Exactly, no.

"Q Let's say approximately 12:30?

"A It was late, yes, It was late -- I'd say around 12:00, 12:30.

"Do you remember where you parked that time?

"A I -- yes, between 183rd and 184th on Valentine Avenue."

Now we are coming to Count Two.

"Q Then you went to your apartment?

"A That's right.

"Q Did you leave your apartment after that?

"A No. Not until the next morning.

"Q About what time did you leave?

"A It was around 7:10 or something like that. I had to return the van before eight or I'd be charged for the next day.

"Q What happened when you looked for the v n?

15 elsr

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1
2 "A It wasn't there.

3 "Q But you're absolutely certain that it was
4 thee approximately 12:30 the previous night?

5 "A When I parked the thing?

6 "Q Yes.

7 "A Yeah.

8 "Q What did you do then, when you noticed
9 the van was missing?

10 "A Well, we walked around the vicinity for a
11 while, because it's common for cars to get stolen in that
12 area, but we didn't find it; so I, you know, came back home
13 and I called the police station."

14 Now Count 3.

15 "Q And when you parked it, now, on 183rd and
16 184th Street did you take the keys to the truck?

17 "A Yes, when we got out, I took the keys.

18 "Q And what did you do with them, do you
19 recall?

20 "A Well, I attempted to put it in my bag -
21 I assumed I put them in my bag. I had a flap bag, I
22 lifted the flap up and threw it in my bag. I had a flap
23 bag, I lifted the flap up and threw it in. It wasn't
24 until the following day, I think it was, when I spoke with
25 Detective Disken, I think it is, that I noticed I didn't

have the keys, so I apparently lost them at the time. I'm just assuming.

"Q Let's go back. Friday evening you thought you put the keys in your purse?

"A I'm assuming it was my purse, because that's what I thought I did.

"Q But you recall you removed them from the truck?

"A Definitely -- oh, definitely. There's no doubt about that.

"Q Did you at this time look for the keys?

"A No, not once. I think I was a little upset about the car. I don't know, you know, I didn't look for the keys until the next day, when I went to Disken. I spoke with Disken; and he asked if I had the keys and I said, 'Yeah,' and I looked in -- you know, I held him on the phone, I was talking to him on the phone, I went to my bag to get them, and they were gone; and at that point I told -- I assumed I'd lost them."

The other defendant, Mr. Charles Thomas, is also charged with violating Title 18, United States Code Section 1623, the perjury statute which I have just read to you. The indictment charges Mr. Thomas in two counts which I will now read to you. Again, I will give you a copy

of this indictment when you retire. The indictment reads:

"1 On or about August 29, 1975, in the Southern District of New York, Charles Thomas, the defendant, having duly taken an oath as a witness that he would testify truthfully before a Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Southern District of New York, and inquiring for that District, unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations as hereinafter set forth.

"2 At the time and place aforesaid, the said Grand Jury was conducting an investigation of possible violations of the laws of the United States regarding the murder on or about August 8, 1975 of Oswald A. Peterson and of Oscar Wilson, whose bodies were found on August 10, 1975 in a U-Haul van, Maine license plate number COM 81-706, in the vicinity of Claremont Avenue and 122nd Street, New York, including, among other violations, violations of the following statutes: Sections 241 (civil rights conspiracy), 1503 and 1510 (obstruction of justice) and 1623 (perjury), of Title 18, United States Code and Sections 801-966 of Title 21, United States Code, (sale and distribution of narcotic drugs and conspiracies so to do), to determine:

1 18 elsr

2 "a whether said murders were committed in
3 furtherance of a conspiracy" -- I am going to skip reading
4 the next five subparagraphs which I have just read to you,
5 and which you will have in front of you.

6 "3 It was material to said inquiry to
7 determine whether the defendant Charles Thomas had any
8 knowledge of and had participated in" -- I just said
9 that the five subparagraphs which I omitted reading were
10 the same as in the indictment of Miss Barnes. The first
11 four subparagraphs are the same. The last one is different.
12 I will read that to you. This is from the indictment of
13 Mr. Thomas.

14 "Whether testimony by one Lugenia Barnes before
15 the Grand Jury on August 21, 1975 and certain statements
16 by said Lugenia Barnes to certain New York City Police
17 officers were truthful:

18 "3. It was material to said inquiry to deter-
19 mine whether the defendant Charles Thomas had any knowledge
20 of and had participated in:

21 "a. the rental by the said Charles Thomas
22 and Lugenia Barnes on August 8, 1975 of and use of a
23 U-Haul Van, Maine license plate number COM 81-706, which
24 was discovered on August 10, 1975 in the vicinity of
25 Claremont Avenue and 122nd Street, New York, New York

1 19 elsr

2 containing the dead bodies of Peterson and Wilson.

3 "b. how and when said van was driven to the
4 vicinity of Claremont Avenue and 122nd Street, New York,
5 New York;

6 "c . how the person or persons who drove said
7 van to the vicinity of Claremont Avenue and 122nd Street,
8 New York, New York obtained possession, custody and control
9 of said van;

10 "d. the identity of said person or persons;
11 and

12 "e. the role, if any, played by the said Charles
13 Thomas and Lugenia Barnes in disposing of the bodies of
14 Peterson and Wilson.

15 "4. It was also material to said inquiry to
16 determine whether certain statements made by Charles Thomas,
17 the defendant, to New York City police officers were
18 truthful.

19 "5. At the time and place aforesaid Charles
20 Thomas, the derendant, appearing as a witness under oath
21 before the said Grand Jury, did testify falsely with respect
22 to the aforesaid material matters and did make the follow-
23 ing false material declarations:

24 "COUNT ONE:

25 "Q Now, I want to direct your attention to the

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2 events beginning approximately August 8, 1975, and at that
3 time you rented a U-Haul van in the Bronx, is that correct?

4 "A Yes, sir.

5 "Q I ask you if you were interviewed about
6 the rental of this truck by members of the Police Depart-
7 ment.

8 "A Yes, I have been.

9 "Q And you told them that you and your girl
10 friend picked the truck up in the Bronx, correct?

11 "A Yes.

12 "Q And what is your girl friend's name?

13 "A Lugenia Barnes.

14 "Q Then you totld the officers that after
15 the two of you rented the truck, you went from the truck
16 rental place in the Bronx to your house downtown, is that
17 correct?

18 "A Right.

19 "Q Then you told them that you had to stop
20 at your mother's house?

21 "A No, no. I'm saying -- from the truck
22 rental place, are you saying th t I went straight from
23 the truck rental place to my house?

24 Q Tell us what happened.

25 "A It wasn't like that. She had to -- this

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1 21 else

2 was not automatic gear or, rather, turning wheel. It's
3 not power steering. So she tried it out in the Bronx
4 first, before she came down. I drove around the station,
5 so she tried.

6 "Q So you drove around the Bronx?

7 "A Right.

8 "Q And then you proceeded --

9 "A Right.

10 "Q -- on to 11 West 118th Street?

11 "A That's right.

12 "Q And you made a stop at your mother's
13 house, but she wasn't home?

14 "A Right.

15 "Q Then you went back uptown to the Bronx?

16 "A Right.

17 "Q And went to --

18 "A Doctor.

19 "Q -- Miss Barnes' doctor, is that correct?

20 "A Right.

21 "Q Do you recall where that's located?

22 "A On the Concourse. Big white -- I can't
23 remember the street number.

24 "Q On the Grand Concourse in the Bronx?

25 "A That's right.

"Q And then you went back downtown; was that to your apartment?

"A Pardon me?

"Q You then went back downtown?

"A Right.

"Q Where did you go?

"A To my apartment.

"Q It was there that you loaded the truck, is that right?

"A Right.

"Q After you loaded the truck, you went back uptown, is that right?

"A Yes.

"Q Where did you go uptown?

"A Back to the house, our new apartment -- my new apartment.

"Q Where is that located?

"A 340 East 184th Street.

"Q Where you unloaded the truck, is that correct?

"A Yes.

"Q You parked the truck and went to sleep, is that correct?

"A Yes.

1 23 elsr

2 "Q You parked it on Valentine Avenue
3 between 183rd and 184th Street?

4 "A Yes, in between. 184th, 183rd.

5 "THE FOREMAN: Could you raise your voice and
6 speak a little louder.

7 "THE WITNESS: 184th and 183rd and Valentine.

8 "Q All these events occurred on Friday, August
9 8, is that correct?

10 "A Yes, sir.

11 "Q And then at about one o'clock, that would
12 be the following morning, you went to move the truck, is
13 that correct?

14 "A Right.

15 "Q It was then you noticed that the truck was
16 gone, is that correct?

17 "A Yes.

18 "Q That was the first time you noticed it was
19 missing?

20 "A Yes.

21 "Q Do you know, approximately what time did
22 you park it outside, did you leave the truck?

23 "A Uh, about seven, eight -- around six or
24 seven, something like that. Between six and eight.

25 "Q Friday evening?

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1 24elsr

2 "A Right,

3 "Count Two:

4 "Q Okay, now, all the statements that you
5 made to the police officers were true, is that correct?

6 "A Yes, sir.

7 "Q And you don't want to make -- or let me
8 ask you, do you want to make any additions or corrections
9 at this time?

10 "A None I can think of. There are not any
11 I I can think of."

12 Simply stated, the definition
13 of perjury is the wilful giving of false testimony knowing
14 it to be false as to materials before a competent
15 tribunal while under oath. In order to sustain its
16 burden of proof against the defendant Lugenia Barnes or
17 the defendant Charles Thomas, under any of the perjury
18 counts of either indictment, the Government must establish
19 beyond a reasonable doubt each one of the following and
20 essential elements:

21 First, that the defendant took an oath to tes-
22 tify truthfully before a United States Grand Jury of the
23 Southern District of New York;

24 second, that the defendant made false statements
25 as to matters about which he or she testified under oath,

1 25 else

2 as set forth in the indictment;

3 three, that such false statements were wilfully
4 made in that at that time the defendant made these state-
5 ments to the Grand Jury, he or she knew them to be false;

6 four, that the matters as to which it is
7 charged he or she made false statements were material
8 to the issues under inquiry by the Grand Jury.

9 If you find that the defendant appeared before
10 the Grand Jury and took an oath to testify truthfully, then
11 you must determine for each count separately, as to that
12 defendant whether beyond a reasonable doubt the defendant
13 made any false statement. The Government satisfies its
14 burden or proving falsity of the testimony on a particular
15 count if you find beyond a reasonable doubt that any part
16 of that count is false.

17 The counts in the indictment charging perjury
18 contain answers given by each defendant, reciting more
19 than one fact. It is not necessary that the Government
20 prove that each of these factual statements is false. It
21 is sufficient if the Government prove beyond a reasonable
22 doubt that at least one factual statement in each count
23 is false.

24 If on any counts for either defendant you find
25 that a false statement was made, you must then determine

1 26 elsr
2 the third element, whether the false statement was wilful y
3 made; in other words, known to the defendant to be false
4 at the time the statement was made. The defendant's
5 knowledge and intent, of course, exist in his or her
6 mind. It is not possible for us to look into a person's
7 mind to see what goes on. So the only way of arriving at
8 a decision on this question is for you to take into con-
9 sideration all the facts and circumstances shown by the
10 evidence and to determine from all such facts and cir-
11 cumstances whether the requisite knowledge and intent was
12 present at the time in question. Direct proof is un-
13 necessary.

14 [Continued on next page.]
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Knowledge and intent may be inferred from all the surrounding circumstances.

Finally, the fourth element was that the matters by which the defendants testified, as set forth in the indictment, were material. In other words, relevant to the issues under inquiry by the Grand Jury before which the testimony was given.

I charge you as a matter of law that the testimony here was relevant and material to the Grand Jury investigation.

A witness is compelled by law to testify truthfully under oath before a competent tribunal such as the Grand Jury or a Court.

In this regard I wish to remind you of the important function served by the law against perjury. In the administration of justice we are all oath bound. You have, each of you, taken an oath; I have; so has the Assistant United States Attorney and so have counsel for the defendants. Every witness who has been on the witness stand has taken an oath. The administration of justice depends upon respect for the sanctity of the oath.

I have told you that the Government must prove its case against each defendant beyond a reasonable doubt, and I have explained to you what is meant by a

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2 reasonable doubt.

3 The Government is not required to prove its
4 case by any particular number of witnesses or any documentary
5 or other particular type of evidence. Evidence may be
6 of two general types, direct evidence and circumstantial
7 evidence. Evidence is direct when the facts are shown
8 by exhibits which have been admitted into evidence, or
9 when sworn to by witnesses who have actual knowledge of them
10 from something they learned through the exercise of their
11 fundamental senses.

12 Circumstantial evidence simply means drawing
13 a logical inference or a conclusion from other connected
14 facts that have been seen or heard.

15 A classic example of circumstantial evidence
16 is Robinson Crusoe sighting a footprint in the sand. From
17 the footprint and his knowledge of the fact that it wasn't
18 his own, he drew the conclusion there was some other
19 person on the island.

20 Not all circumstantial evidence is that clear,
21 but I am sure that you are all familiar with the process
22 of drawing logical conclusions from other connected
23 facts.

24 Now greater degree of certainty is required
25 when evidence is circumstantial than when it is direct,

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2 for in either case you must be convinced beyond a rea-
3 sonable doubt before you can find a defendant guilty.

4 The charge of perjury, like any other charge,
5 may be proved in whole or in part by circumstantial
6 evidence.

7 Now, in deciding the facts you must evaluate
8 the credibility of the witnesses who testified. Your de-
9 termination of the issue of credibility very largely
10 must depend upon the impression that a witness made upon
11 you as to whether or not he or she was telling the truth
12 or giving you an accurate version of what occurred.

13 As jurors your job is to use your common sense,
14 your good judgment, your experience. You will decide
15 whether or not the witness was straightforward and
16 truthful, whether the witness was attempting to conceal
17 anything, whether the witness had a motive to testify
18 falsely, whether there is any reason why the witness
19 might color his testimony. The ultimate question for
20 you to decide in passing on credibility is, did the
21 witness tell the truth here before you as to essential
22 material matters? It is for you to say whether a witness
23 in this trial was truth ful in whole or in part in the
24 light of his or her demeanor and all the evidence in the
25 case.

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2 In passing upon the credibility of witnesses
3 of course you may take into account such contradictions
4 as there may be in the testimony, but always remember,
5 whether or not, in substance, the witness has told the
6 truth before you.

7 The Government, to prevail, must, as I have
8 told you, on each count prove the essential elements by
9 the required degree of proof - that is, beyond a reasonable
10 doubt. If it succeeds as to a particular defendant on a
11 particular count, your verdict should be guilty. If
12 it fails it should be not guilty.

13 The case of each de endant must be considered
14 separately, as if he or she alone were on trial here.
15 You must consider each count separately and render a
16 separate verdict as to each count.

17 Thus, you may render a verdict of guilty on
18 both counts, not guilty on both counts, or guilty on one
19 and not guilty on others, as the case may be, and for
20 each defendant.

21 You must be unanimous as to your verdict on
22 each count.

23 Under your oath as jurors you cannot allow
24 a consideration of the sentence which may be imposed
25 upon a defendant if he or she were convicted to enter

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2 into your deliberations or to influence your verdict in
3 any way. Your duty is to decide the case solely and only
4 upon the evidence that has been presented to you in this
5 courtroom and my instructions as to the law. The duty
6 of imposing sentence, if there is a conviction, is mine,
7 not yours.

8 Each juror is entitled to his or her own
9 opinion. But each should exchange views with your fellow
10 jurors. That is the very purpose of jury deliberation,
11 to discuss, to consider the evidence, to listen to the
12 argument of fellow jurors, present your own views,
13 consult with one another, and then reach an agreement
14 based solely on the evidence in accordance with the law
15 which I have given you.

16 Each of you must decide the case for yourself.
17 But you should not hesitate to change an opinion which
18 after discussion with your fellow jurors appears to be
19 erroneous. In other words, if you have a point of view,
20 and after listening to the discussion of any particular
21 point of view with other jurors you are persuaded that
22 your point of view ought to yield on the basis of the
23 evidence and the law, there is no reason why you should
24 not change your mind and change an opinion which you have
25 previously held.

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2 However, your final vote must reflect your
3 conscientious judgment as to how the case would be decided
4 upon the evidence and the law.

5 If in your own mind the Government has failed
6 to carry its burden as to a defendant, as to any count,
7 your sworn duty is to acquit. On the other hand, if it
8 has carried its burden, then you must not flinch from
9 your sworn duty, which is to convict.

10 Finally, you have a right to see all the
11 evidence. I will hand you, as you leave, or my Clerk
12 will hand you, as you retire to deliberate, copies of
13 the indictments. You will let me know, Mrs. Cohen, if
14 there is anything else you want. You will give a note
15 to the marshal, and he will let me know what documents
16 you want, what testimony you want, anything you need.

17 I want to caution you, Mrs. Cohen, any note
18 that you give to the marshal, you must not indicate
19 in that note in any way how you stand, but please don't
20 hesitate to send me a note any time you want anything.

21 I will see counsel at the side bar.

22 [At the side bar:]

7.2 23 MR. GOLDBERGER: Your Honor, there is only
24 one exception to the Court's charge and that is in regard
25 to the fact that the Court charged the jury that the

* * * * *

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AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 19 day of Nov. ,19 76 at No. 1 St. Andrews Pl. NYC

deponent served the within *Appendix*
upon U.S. Atty., So. Dist. of N.Y.

the Appellee herein, by delivering true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me this
19 day of Nov. 1976.

William Bailey
WILLIAM BAILEY
Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County
Commission Expires March 30, 1978

Edward Bailey
Edward Bailey